

AMENDED IN SENATE AUGUST 29, 2008

AMENDED IN SENATE AUGUST 28, 2008

AMENDED IN SENATE MAY 21, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

ASSEMBLY BILL

No. 408

Introduced by Assembly Member ~~Jones~~ *Levine*

February 16, 2007

~~An act to amend Section 6322.1 of the Business and Professions Code, to amend Sections 68085.1, 68085.3, 68085.4, 68086.1, 70372, 70374, 70375, 70391, 70603, 70611, 70612, 70613, 70614, 70617, 70621, 70650, 70651, 70652, 70653, 70654, 70655, 70656, 70657, 70657.5, 70658, and 70670 of, and to add Sections 68085.45, 70371.5, 70371.6, 70373, and 70602 to, the Government Code, to amend Section 103470 of the Health and Safety Code, to amend Section 1463.010 of, and to amend, repeal, and add Section 1203.1d of, the Penal Code, to amend Section 7660 of the Probate Code, and to amend Sections 40611 and 42007.1 of the Vehicle Code, relating to court facilities, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately. An act to amend Section 350 of the Labor Code, relating to service gratuities.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 408, as amended, ~~Jones~~ *Levine*. ~~Court facilities: financing. Service gratuities.~~

(1) *Existing law provides that a gratuity paid to a service employee by a patron is the sole property of the employee to whom it was paid, and no part of the gratuity may be taken by the employee's employer or deducted from the employee's wages. Under existing law, "gratuity"*

includes any tip, gratuity, money, or part thereof that has been paid or given to or left for an employee by a patron of a business over and above the actual amount due the business for services rendered or for goods, food, drink, or articles sold or served to the patron. Any employer who violates this provision is guilty of a misdemeanor.

This bill would include within the definition of gratuity any amounts paid by a person other than an employer directly to a person employed to transfer personal luggage from airline passengers to airline passenger baggage transport facilities. By expanding the definition of an existing crime, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~(1) The Trial Court Facilities Act of 2002 establishes the State Court Facilities Construction Fund and provides that moneys in that fund may be used to acquire, rehabilitate, construct, or finance court facilities, as defined, and to implement trial court projects in designated counties, as specified.~~

~~This bill would extend the purposes for which moneys in that fund may be used to include the planning, design, construction, rehabilitation, replacement, leasing, or acquisition of court facilities. The bill would establish the Immediate and Critical Needs Account of the State Court Facilities Construction Fund, the proceeds of which would be used for the planning, design, construction, rehabilitation, renovation, replacement, or acquisition of court facilities, for the repayment of moneys appropriated for lease of court facilities pursuant to the issuance of lease-revenue bonds, and for the payment for lease or rental of court facilities. The bill would require the Judicial Council to collect and make available information regarding moneys in the account, as specified, and to make recommendations to the Governor and the Legislature for projects based on its determination that the need for a project is most immediate and critical, as specified. The bill would authorize the Judicial Council to acquire sites for the replacement of deficient court facilities in four specified counties and would appropriate up to \$61,584,000 from the State Court Facilities Construction Fund to the Judicial Council for this purpose. The bill would require any moneys remaining in, or that would otherwise be payable into, the~~

~~Immediate and Critical Needs Account of the State Court Facilities Construction Fund, to be transferred to the Controller for deposit into the State Trial Court Operations Trust Fund, as established by this bill, upon the retirement of any bonded indebtedness that may be incurred in connection with immediate and critical trial court projects, the proceeds of which would be available upon appropriation by the Legislature only for trial court operations.~~

~~(2) Existing law provides that the Judicial Council, as the policymaking body for the judicial branch, shall have certain responsibilities and authorities with regard to court facilities, including to conduct audits of the collection of fees by the local courts, and to establish and consult with local project advisory groups on the construction of new trial court facilities.~~

~~This bill would further authorize the Judicial Council to conduct audits of the collection of fees to be transmitted to the state for deposit in the Immediate and Critical Needs Account of the State Court Facilities Construction Fund. The bill would include the local sheriff among those local project advisory groups with which the Judicial Council consults in the construction of new trial court facilities, as specified.~~

~~(3) Existing law specifies various uniform fees for filing specified documents in connection with certain civil proceedings, including a fee schedule for filing a first petition or first account in connection with a trust or estate. Existing law also imposes a fee of \$20 upon every conviction for a criminal offense, other than parking offenses, for funding of court security, and a fee of \$10 for corrections of violations of license, registration, or mechanical requirements of the Vehicle Code. Supplemental penalties and fees are imposed upon specified parking offenses and persons ordered to attend traffic violator school. Existing law specifies the disposition of fines and forfeitures, and traffic violator fees, collected by the courts for crimes other than parking violations.~~

~~This bill would generally increase those fees, and would impose an additional assessment upon every conviction for a criminal offense, but would eliminate the fee schedule for filing a first petition or first account in connection with a trust or estate and replace it with a set filing fee. The bill would eliminate certain exemptions from payment of filing fees in connection with an estate. The bill would impose a fee for filing in the superior court an application to appear as counsel pro hac vice. The bill would provide for a specified portion of all of those fees to be deposited into the Immediate and Critical Needs Account of the State Court Facilities Construction Fund, as described in (1) above. The bill~~

would make other conforming changes, and would declare the intent of the Legislature to establish a moratorium on increases in filing fees until January 1, 2012.

(4) This bill would incorporate additional changes in Section 68085.1 of the Government Code proposed by AB 1873, to be operative if AB 1873 and this bill are both chaptered and become effective on or before January 1, 2009, and this bill is chaptered last.

(5) This bill would incorporate additional changes in Sections 68085.3, 68085.4, 68086.1, 70611, 70612, 70613, 70614, 70621, 70650, 70651, 70652, 70653, 70654, 70655, 70656, 70658, and 70670 of the Government Code, Section 103470 of the Health and Safety Code, and Section 7660 of the Probate Code, proposed by SB 1177, to be operative if SB 1177 and this bill are both chaptered and become effective on or before January 1, 2009, and this bill is chaptered last.

(6) This bill would declare that it is to take effect immediately as an urgency statute; however, the provisions of the bill would become operative on January 1, 2009.

Vote: $\frac{2}{3}$ -majority. Appropriation: ~~yes~~-no. Fiscal committee: yes. State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 350 of the Labor Code is amended to
2 read:

3 350. As used in this article, unless the context indicates
4 otherwise:

5 (a) "Employer" means every person engaged in any business
6 or enterprise in this state that has one or more persons in service
7 under any appointment, contract of hire, or apprenticeship, express
8 or implied, oral or written, irrespective of whether the person is
9 the owner of the business or is operating on a concessionaire or
10 other basis.

11 (b) "Employee" means every person, including aliens and
12 minors, rendering actual service in any business for an employer,
13 whether gratuitously or for wages or pay, whether the wages or
14 pay are measured by the standard of time, piece, task, commission,
15 or other method of calculation, and whether the service is rendered
16 on a commission, concessionaire, or other basis.

17 (c) "Employing" includes hiring, or in any way contracting for,
18 the services of an employee.

1 (d) "Agent" means every person other than the employer having
2 the authority to hire or discharge any employee or supervise, direct,
3 or control the acts of employees.

4 (e) "Gratuity" includes any tip, gratuity, money, or part thereof
5 that has been paid or given to or left for an employee by a patron
6 of a business over and above the actual amount due the business
7 for services rendered or for goods, food, drink, or articles sold or
8 served to the patron. Any amounts paid directly by a patron to a
9 dancer employed by an employer subject to Industrial Welfare
10 Commission Order No. 5 or 10 shall be deemed a gratuity. *Any*
11 *amounts paid by a person other than an employer directly to a*
12 *person employed to transfer personal luggage from airline*
13 *passengers to airline passenger baggage transport facilities shall*
14 *be deemed a gratuity.*

15 (f) "Business" means any business establishment or enterprise,
16 regardless of where conducted.

17 SEC. 2. *No reimbursement is required by this act pursuant to*
18 *Section 6 of Article XIII B of the California Constitution because*
19 *the only costs that may be incurred by a local agency or school*
20 *district will be incurred because this act creates a new crime or*
21 *infraction, eliminates a crime or infraction, or changes the penalty*
22 *for a crime or infraction, within the meaning of Section 17556 of*
23 *the Government Code, or changes the definition of a crime within*
24 *the meaning of Section 6 of Article XIII B of the California*
25 *Constitution.*

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28 **All matter omitted in this version of the bill**
29 **appears in the bill as amended in Senate,**
30 **August 28, 2008 (JR11)**
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